

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF JAMAICA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of Jamaica hereinafter referred to as "Contracting Parties";

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Desiring to create favourable conditions for greater economic cooperation between them, and in particular for investment by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows;

Article I. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:
 - a. Movable and immovable property as well as other rights such as mortgages, privileges, and any other similar rights;
 - b. Rights derived from shares, bonds or any other form of interest in companies or joint venture in the territory of the other Contracting Party;
 - c. Claims to money or to any performance having a financial value;
 - d. Intellectual property rights, technical processes, goodwill and know-how;
 - e. Business concessions conferred by law or under contract related to the investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved or admitted under Article II.

2. The term "investor" means:
 - (i) Any natural person possessing citizenship of a Contracting Party who invests in the territory of the other Contracting Party in accordance with the laws and regulations of that Contracting Party;

(ii) Legal persons which are constituted or incorporated under the laws of a Contracting Party and which invest in the territory of the other Contracting Party,

3. "Territory" shall mean:
 - a. In respect of the Republic of Indonesia:

The Territory of the Republic of Indonesia as defined in its laws, including parts of the Continental Shelf, the Exclusive Economic Zone, subsoil adjacent to the outer limit of the territorial seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the 1982 United Nations Convention on the Law of the Sea,

- b. In respect of Jamaica:

The territory of Jamaica as well as those maritime areas, including the Sea bed and subsoil adjacent to the outer limit of the territorial sea, over which Jamaica exercises, in accordance with international law, jurisdiction or sovereign rights for the purpose of exploration or exploitation of natural resources.

Article II. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favorable conditions for investors of the other Contracting to invest in its territory, and shall admit such capital in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.
3. The Contracting Parties may periodically consult concerning investment opportunities in various sectors of their respective economies to determine where investments may be most beneficial in their mutual interest.

Article III. Most-favoured Nation Provisions

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investment adequate physical security and protection.
2. More particularly, each Contracting Party shall accord to such investments, treatment which in any case shall not be less favorable than that accorded to investments of investors of any Third State.
3. If a Contracting Party has accorded special advantages to investor of and third state by virtue of agreements establishing customs unions economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party
4. Nothing in this Agreement shall oblige a contracting Party to extend to investors of the other Contracting Party any special advantages by virtue of any international agreement or arrangement or any domestic legislation relating wholly or mainly to double taxation.

Article IV. Expropriation

Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to expropriation or nationalization against the investment of an investor of the other Contracting Party except under the following conditions: (a) The measures are taken for a lawful purpose or public purpose and under due process of law;

(b) The measures are non-discriminatory;

(c) The measures are accompanied by prompt and effective compensation according to the market value of the expropriated investment immediately before the impending expropriation was publicly announced, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable, In determining the market value, due weight shall be given to any factors which might have affected the value of the investment before the measure was publicly announced.

Article V. Compensation for Losses

1. Investors of one Contracting Party, whose investments in the territory of the Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement.
2. The treatment shall not be less favourable than that which the latter Contracting Party accords to investments of its own investors or investments of investors of any third state.

Article VI. Transfers

1. Each Contracting Party shall grant the investors of the other Contracting Party, in accordance with its laws and regulations, the right to transfers related to investments, in particular, though not exclusively of: a. Profits, interests, dividends and other current income;

- b. Funds necessary (i) For the acquisition of raw materials or auxiliary materials, semi fabricated or finished products, or (ii) To replace capital assets in order to safeguard the continuity of an investment;
 - c. Funds in repayment of loans related to the investment;
 - d. Royalties or fees;
 - e. Earnings of natural persons of the other Contracting Party who are employed in connection with the investment in accordance with the Work Permit laws of the other Contracting Party.
 - f. The proceeds of sale or liquidation of the investment, provided however, that in periods of exceptional balance of payments difficulties, transfers may be phased over three years;
 - g. Compensation for losses;
 - h. Compensation for expropriation.
2. Any transfer shall be made at the prevailing rate of exchange on the date of transfer.

Article VII. Subrogation

If the investments of a investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Article VIII. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible be settled amicably through negotiations.
2. If the dispute cannot be so settled within six months from the start of the negotiations, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be constituted in the following way: Each Contracting Party shall appoint an arbitrator and these two arbitrators shall then select a national of a third State who shall act as Chairman, the arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to arbitration.
4. If within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority, who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall issue its decision on the basis of the rules contained in this Agreement as well as of the principles of International Law.
6. The Arbitral Tribunal shall determine its own procedure and shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its Counsel in the arbitral proceedings, the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

Article IX. Settlement of Disputes between Investors and a Contracting Party

1. Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.
2. If the dispute cannot be settled within six months following the date on which the dispute has been raised by either party,

it may be submitted to: (i) The judicial procedures provided by the Contracting Party in whose territory the investment was made or

(ii) International arbitration according to the provisions of Paragraph 3.

3. Where a dispute has been raised by an investor and the parties disagree as to the choice of (i) or (ii) the opinion of the investor shall prevail.

4. Pursuant to Paragraph 2 and 3, where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this decision shall be final.

5. In case of international arbitration, the dispute shall be submitted either to: (i) The International Centre for the Settlement of Investment Disputes (ICSID) created by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" opened for signature in Washington D.C. on 18th March, 1965;

(ii) An ad hoc arbitration tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

6. The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, the terms of any specific agreement concluded in relation to such an investment and the relevant principles in international laws.

7. The arbitration decisions shall be final and binding for the Parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.

Article X. Applicability of this Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force with respect investments made prior to this Agreement, the period of applicability shall be ten years.

Article XI. Application of other Provisions

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such regulations shall to the extent that it is more favorable prevail over the present Agreement.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force three months after the date of the latest notification by which Contracting Parties have notified each other that their constitutional requirements for the entry into of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for a similar period unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement one year before its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this

Agreement.

Done in duplicate at Montego Bay, Jamaica, on 8th February, 1999 in the Indonesian and English languages. Both texts are equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

ALI ALATAS

Minister of Foreign Affairs

FOR THE GOVERNMENT OF JAMAICA

SEYMOUR MULLINGS

Minister of Foreign Affairs and Foreign Trade